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FISCAL IMPACT REPORT

SPONSOR Sharer ORIGINAL DATE 02/08/09
LAST UPDATED _____ HB _____
SHORT TITLE Marriage Defined SJR 6
ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 6 would propose an amendment to the New Mexico Constitution incorporating language regarding “Marriage in this state shall consist only of the union between one man and one woman.”

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

The Attorney General’s Office indicates that “New Mexico’s marriage law does not mention gender, but NMSA 1978, Section 40-1-1 defines marriage as a civil contract between contracting parties.

The lack of a specific law defining marriage based upon gender led the State of Massachusetts Registry of Vital Records to issue instructions that New Mexico residents of the same sex may obtain marriage licenses in Massachusetts (where same gender marriages are legal).
<http://jurist.law.pitt.edu/paperchase/2007/07/massachusetts-oks-same-sex-marriage.php>

Senate Joint Resolution 6 – Page 2

It is almost certain that a statutory or constitutional restriction of marriage to specific genders would be challenged in court.

Courts in other states have recently invalidated statutes and common law rules that explicitly limited marriage to a male and a female as unconstitutional. See, for example, *Kerrigan v. Comm’r of Public Health*, 289 Conn. 135, 957 A 2d 407 (2008); *Opinions of the Justices to the Senate* 440 Mass. 1201, 802 N.E. 2d 565 (2004); *In Re Marriage Cases*, 43 Cal.4th 757, 183 P.3d 384 (2008). The statutes were invalidated on equal protection, privacy and due process grounds arising from state constitutions with provisions similar to the New Mexico Constitution.

Some states have amended their constitutions to exclude same gender couples from marriage rights or from equal protection for marriage interests. These provisions have withstood state law challenges to gender restrictions for marriage. See, for example, *Anderson v. King County* 158 Wash. 2d 1, 138 P.3d 963 (2006); *Li v Oregon* 338 Or. 376, 110 P.3d 91 (2005). However, they remain subject to challenge under the Federal constitution, particularly on federal equal protection grounds.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Joint Resolution 2 is a duplicate.

House Bill 118 proposes to enact a new state law to provide that “Marriage in this state shall consist only of the union between one man and one woman.”

House Bill 21, Senate Bill 12 and Senate Bill 144 propose to enact new laws, with varying different provisions that would provide some of the incidents of marriage to two unmarried parties who commit to share responsibilities and benefits.

GM/svb